

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

SEP 30 2019

Clerk, U S District Court  
District Of Montana  
Billings

CHARLES M. BUTLER, III and  
CHOLE BUTLER

Plaintiffs,

vs.

UNIFIED LIFE INSURANCE  
COMPANY; HEALTH PLANS  
INTERMEDIARIES HOLDINGS,  
LLC, doing business as Health  
Insurance Innovations, Inc.; ALLIED  
NATIONAL, INC.; NATIONAL  
BROKERS OF AMERICA, INC.;  
THE NATIONAL CONGRESS OF  
EMPLOYERS, INC.; and DOES 1-10

Defendants.

CV 17-50-BLG-SPW

ORDER

Before the Court are United States Magistrate Judge Cavan's findings and recommendations issued August 9, 2019. (Doc. 225). Judge Cavan recommends the Court grant in part and deny in part various cross motions for summary judgment filed by the parties.

**I. Standard of review**

The parties filed timely objections to the findings and recommendation. (Doc. 27). The parties are entitled to de novo review of those portions of Judge

Cavan's findings and recommendation to which they properly object. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

## **II. Judge Cavan's recommendations**

Judge Cavan issued recommendations on the Plaintiffs' motion for partial summary judgment (Doc. 98) and the Plaintiffs' second motion for partial summary judgment (Doc. 125); Defendant Allied National and Unified Life's motion for partial summary judgment (Doc. 115) and their motion for summary judgment (Doc. 128); Defendant Health Plans Intermediaries' motion for summary judgment (Doc. 132); and Defendant National Congress of Employers' motion for summary judgment (Doc. 137).

Regarding the Plaintiffs' motion for partial summary judgment (Doc. 98) and Allied/Unified's motion for partial summary judgment (Doc. 115), Judge Cavan recommended Unified breached the Reasonable and Customary Charge clause of the insurance policy as a matter of law, did not breach the policy in regard to network access as a matter of law, and did not breach the policy in regard to the extension of benefits as a matter of law. (Doc. 225 at 10-25).

Regarding Allied/Unified's motion for summary judgment (Doc. 128), Judge Cavan recommended the motion be granted as to Allied and denied as to Unified. (Doc. 225 at 25-28).

Regarding the Plaintiffs' second motion for partial summary judgment (Doc. 125) and Health Plans Intermediaries' motion for summary judgment (Doc. 132), Judge Cavan recommended the motions be denied as to Counts III-IX and XIV because there were disputed issues of material fact. Judge Cavan recommended Health Plans Intermediaries' motion be granted as to counts II and X-XIII. (Doc. 225 at 34-54).

Regarding the National Congress of Employers' motion for summary judgment, Judge Cavan recommended the motion be granted as to Counts II and VIII-XIII but denied as to Counts III-VII and XV. (Doc. 225 at 54-59).

### **III. Parties' objections**

#### **A. Defendant Unified Life Insurance Company's objections**

Unified objects to Judge Cavan's recommendation that it breached the Reasonable and Customary Charge clause of its insurance policy as a matter of law. The Court agrees with Judge Cavan and adopts Judge Cavan's recommendation in full.

#### **B. The Plaintiffs' objections**

The Plaintiffs object to Judge Cavan's recommendation that Unified did not breach the insurance policy regarding network access and extension of benefits. The Court agrees with Judge Cavan and adopts Judge Cavan's recommendation in full.

### **C. Defendant Health Plans Intermediaries' objections**

Health Plans Intermediaries objects to Judge Cavan's recommendation that disputed issues of fact prevent summary judgment in its favor on Counts III-IX and XIV. The Court agrees with Judge Cavan and adopts Judge Cavan's recommendation in full.

### **IV. Order**

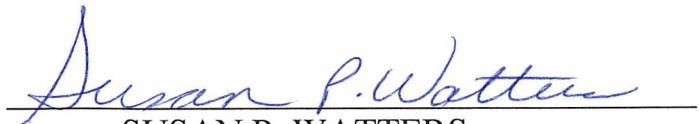
It is hereby ordered:

1. Judge Cavan's findings and recommendations (Doc. 225) are adopted in full;
2. The Plaintiffs' motion for partial summary judgment (Doc. 98) is granted in part and denied in part;
3. Allied/Unified's motion for partial summary judgment (Doc. 115) is granted in part and denied in part;
4. Allied/Unified's motion for partial summary judgment (Doc. 128) is granted as to Allied and denied as to Unified;
5. The Plaintiffs' second motion for partial summary judgment (Doc. 125) is denied;
6. Health Plans Intermediaries' motion for summary judgment (Doc. 132) is granted as to Counts II and X-XIII and denied as to Counts III-IX and XIV;

7. National Congress of Employers' motion for summary judgment (Doc. 137) is granted as to Counts II and VIII-XIII and denied as to Counts III-VII and XV.

8. National Congress of Employers' motion to strike (Doc. 209) is granted.

DATED this 30<sup>th</sup> day of September 2019.



SUSAN P. WATTERS

United States District Judge